

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AMY MAY,

vs.

Plaintiff,

BRUCE K. BRUNTON.

Defendant.

CASE NO:12-CV-2860 W (MDD)

## ORDER:

**(1) DENYING PLAINTIFF'S MOTION TO STRIKE [DOC. 69], AND**

**(2) GRANTING-IN-PART  
PLAINTIFF'S MOTION FOR  
ATTORNEY'S FEES [DOC. 62]**

Pending before the Court are Plaintiff's motion for attorney's fees (Pl.'s Mot. Fees [Doc. 62]) and Plaintiff's motion to strike Defendant's expert declaration in support of Defendant's opposition to Plaintiff's fee motion. (Pl.'s Obj. & Mot. Strike [Doc. 69].) The Court decides the matter on the papers submitted and without oral argument. See Civ. L.R. 7.1(d.1). For the reasons discussed below, the Court **DENIES** Plaintiff's motion to strike [Doc. 69] and **GRANTS-IN-PART** Plaintiff's motion for attorney's fees [Doc. 62].

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1    I.    BACKGROUND

2        On November 30, 2012, Plaintiff Amy May filed suit against her now-former  
 3 landlord, Defendant Bruce K. Brunton, alleging discrimination and harassment on the  
 4 basis of sex in violation of the federal Fair Housing Act and related state laws. (Compl.  
 5 [Doc. 1] ¶¶ 1, 6-35.) On January 18, 2013, Defendant filed his answer along with two  
 6 counterclaims against Plaintiff for: (1) breach of contract, and (2) defamation. (See  
 7 *Answer & Counterclaim* [Doc. 5].) On February 11, 2013, Plaintiff moved to dismiss  
 8 Defendant's breach of contract counterclaim. (See *MTD Counterclaim* [Doc. 8].) Plaintiff  
 9 also moved—under California Code of Civil Procedure § 425.16 (California's “anti-  
 10 SLAPP” statute)—to strike Defendant's counterclaim for defamation. (See *Mot. Strike  
 11 Counterclaim* [Doc. 9].)

12        Thereafter, the parties filed, and the Court subsequently granted, a joint motion  
 13 to dismiss Defendant's counterclaim for breach of contract. (See *March 15, 2013 Order*  
 14 [Doc. 16].) The Court then dismissed Defendant's counterclaim for defamation after  
 15 Defendant filed a notice of non-opposition to Plaintiff's motion to strike. (See *April 5,*  
 16 *2013 Order* [Doc. 24].) In the wake of that litigation, Plaintiff filed a motion for  
 17 attorney's fees under the anti-SLAPP statute for work done by the Legal Aid Society of  
 18 San Diego (“LASSD”) on Plaintiff's case. (See *Mot. Anti-SLAPP Fees* [Doc. 31].) On  
 19 August 2, 2013, the Court granted the motion and awarded Plaintiff attorney's fees in  
 20 the amount of \$11,660.00. (*August 2, 2013 Order* [Doc. 34].)

21        On April 10, 2013, Magistrate Judge Mitchell D. Dembin held the telephonic case  
 22 management conference. (See *CMC Minute Entry* [Doc. 28].) The following day, the case  
 23 management order regulating discovery and other pretrial proceedings issued. The order  
 24 indicated that all expert disclosures required by Federal Rule of Civil Procedure 26(a)(2)  
 25 be served on all parties on or before August 26, 2013, and that rebuttal disclosures  
 26 within the meaning of Rule 26(a)(2)(D)(ii) be disclosed on or before September 26, 2013.  
 27 (*CMC Order* [Doc. 29] ¶ 2.) The order further indicated that all discovery be completed  
 28 by all parties on or before October 28, 2013. (*Id.* ¶ 3.)

1        Thereafter, on May 30, 2014, Judge Dembin held a settlement conference,  
 2 wherein the parties agreed to settle the case. (See, e.g., Notice of Settlement [Doc. 56].) The  
 3 terms of the settlement agreement provided that: (1) Defendant or his insurer would pay  
 4 \$40,000 to Plaintiff by June 30, 2014; (2) Defendant or his insurer would pay Plaintiff's  
 5 reasonable attorney's fees and costs to be fixed by the Court in the absence of an  
 6 agreement as to the amount of such fees and costs;<sup>1</sup> and (3) Defendant would cease and  
 7 desist from the operation or management of any investment rental dwelling, and would  
 8 "retain a professional manager, certified as a California Certified Residential Manger by  
 9 the California Apartment Association to operate and manage his rental dwellings, as  
 10 further described in the parties' settlement agreement." (Jt. Appl. & Stip. [Doc. 60] ¶¶  
 11 2-4; see also Rep. Tr. of Settlement [Doc 62-3].) On July 29, 2014, Plaintiff filed the instant  
 12 motion for attorney's fees. (See Pl.'s Mot. Fees; Mem. P&A ISO Pl.'s Mot. Fees [Doc. 62-1].)  
 13 On September 15, 2014, Defendant filed his opposition and supporting expert  
 14 declaration challenging the total amount of fees sought by Plaintiff. (Def.'s Opp'n [Doc.  
 15 66].) Subsequently, on October 10, 2014, Plaintiff filed her reply and concurrent motion  
 16 to strike Defendant's expert declaration. (See Pl.'s Reply [Doc. 70]; Pl.'s Obj. & Mot. Strike.)  
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18 **II. LEGAL STANDARD**

19        Under the Fair Housing Act's fee-shifting provision, "the court, in its discretion,  
 20 may allow the prevailing party, other than the United States, a reasonable attorney's fee  
 21 and costs." 42 U.S.C. § 3613(c)(2).<sup>2</sup> A "prevailing party" for the purposes of attorney's  
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23       <sup>1</sup> The agreement set a deadline of July 29, 2014 for Plaintiff to file her motion for attorney's fees  
 24 and costs. (Jt. Appl. & Stip. [Doc. 60] ¶ 3.) Plaintiff filed her motion on that date. In addition, the  
 25 agreement provided that "Defendant retains all rights to contest the amount of, but not the entitlement  
 26 to, an award of attorneys' fees and costs to Plaintiff." (Id.) The agreement further indicated that "[t]he  
 27 decision of the Court" on the issue of reasonable fees and costs "shall be binding and no party may  
 28 appeal." (Id.)

29       <sup>2</sup> Plaintiff also seeks attorney's fees under California law. (Mem. P&A ISO Pl.'s Mot. Fees  
 30 5:21-6:8.) Under California Government Code § 12989.2, a court may award reasonable attorney's  
 31 fees and costs to a prevailing party in "a civil action brought under Section 12981 or 12989.1, if the

1 fees is a party who “succeed[s] on any significant issue in litigation which achieves some  
 2 of the benefit the parties sought in bringing suit.” Hensley v. Eckerhart, 461 U.S. 424,  
 3 433 (1983) (internal quotation marks omitted).<sup>3</sup> Stated differently, “a plaintiff ‘prevails’  
 4 when actual relief on the merits of his claim materially alters the legal relationship  
 5 between the parties by modifying the defendant’s behavior in a way that directly benefits  
 6 the plaintiff.” Farrar v. Hobby, 506 U.S. 103, 111–12 (1992) (citations omitted).

7 Initially, “[t]he fee applicant bears the burden of documenting the appropriate  
 8 hours expended in the litigation and must submit evidence in support of those hours  
 9 worked.” Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir. 1992) (citing Hensley,  
 10 461 U.S. at 433, 437). “The party opposing the fee application has a burden of rebuttal  
 11 that requires submission of evidence to the district court challenging the accuracy and  
 12 reasonableness of the hours charged or the facts asserted by the prevailing party in its  
 13 submitted affidavits.” Id. at 1397-98 (citing Blum v. Stenson, 465 U.S. 886, 892 n.5  
 14 (1984); Toussaint v. McCarthy, 826 F.2d 901, 904 (9th Cir. 1987)). Ultimately, “[i]t  
 15 remains for the district court to determine what fee is ‘reasonable.’” Hensley, 461 U.S.  
 16 at 433.

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18 court finds that a discriminatory housing practice has occurred.” Cal. Gov’t Code § 12989.2. Similarly,  
 19 California Civil Code § 52 allows for an award of attorney’s fees against culpable defendants in certain  
 20 discrimination suits. Cal. Civ. Code § 52(a), (b)(3). Because attorney’s fees under these state law  
 21 provisions are calculated according to the same lodestar method as 42 U.S.C. § 3613(c)(2), the Court’s  
 22 analysis of the reasonableness of Plaintiff’s requested fees is equally applicable under federal and  
 23 California law. See Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1112 (9th Cir. 2014) (citing  
Ketchum v. Moses, 24 Cal. 4th 1122 (2001); Muniz v. United Parcel Serv., Inc., 738 F.3d 214 (9th Cir.  
 2013).

24 <sup>3</sup> In Hensley, the Supreme Court dealt with a “prevailing party” seeking to recover attorney’s fees  
 25 under 42 U.S.C. § 1988. 461 U.S. at 424. However, courts addressing the same issue under § 3613  
 26 may rely on cases interpreting § 1988, because “fee-shifting statutes’ similar language is ‘a strong  
 27 indication’ that they are to be interpreted alike.” Indep. Fed’n of Flight Attendants v. Zipes, 491 U.S.  
 28 754, 758 n.2 (1989) (citations omitted); see also Hensley, 461 U.S. at 433 n.7 (“The standards set forth  
 in this opinion are generally applicable in all cases in which Congress has authorized an award of fees  
 to a ‘prevailing party.’”); Silver Sage Partners, Ltd. v. City of Desert Hot Springs, 251 F.3d 814, 826 (9th  
 Cir. 2001). Moreover, 42 U.S.C. § 3602(o) explicitly states that “[p]revailing party” has the same  
 meaning as such term has in section 1988 of this title.”

1       Generally, a court begins its calculation of reasonable attorney's fees using the  
 2 "loadstar" method, which calculates the product of the number of hours reasonably  
 3 expended and a reasonable hourly rate. *Hensley*, 461 U.S. at 433; *McGrath v. County*  
 4 of Nevada, 67 F.3d 248, 252 (9th Cir. 1995). The court may then make adjustments to  
 5 the lodestar, if necessary, to arrive at a reasonable fee. *Blum*, 465 U.S. at 888; *Hensley*,  
 6 461 U.S. at 434-37. Although the court "has a great deal of discretion in determining  
 7 the reasonableness of the fee," the court also must provide a "clear explanation of its  
 8 reasons for the fee award." *Gates*, 987 F.2d at 1398 (quoting *Hensley*, 461 U.S. at 437).  
 9 "[A] brief explanation of how the court arrived at its figures will do." *Cunningham v.*  
 10 *County of Los Angeles*, 879 F.2d 481, 484 (9th Cir. 1988).

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12 **III. DISCUSSION**

13       In her motion, Plaintiff seeks a total of \$101,615.00 in fees for work completed  
 14 by her attorneys Christopher Brancart, of Brancart & Brancart, and Branden Butler, of  
 15 LASSD.<sup>4</sup> (See Mem. P&A ISO Pl.'s Mot. Fees.) This amount also includes work completed  
 16 by Mr. Brancart's paralegal, Nathan Gardner. (See, e.g., *id.* at 7:1-19; 14:7-10.) In  
 17 addition to these fees, Plaintiff seeks costs in the amount of \$4,941.13.<sup>5</sup> Moreover, in  
 18 her reply, Plaintiff seeks an additional \$9,102.00 in fees for time spent by her attorneys  
 19 in "responding to [D]efendant's opposition, including attempting to subpoena  
 20 information from defense counsel and [D]efendant's expert and preparing th[e] reply

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22       <sup>4</sup> This figure is based on: (1) 149.6 hours of work by Mr. Brancart at \$450.00 per hour; (2) 110.1  
 23 hours of work by Mr. Butler at \$285.00 per hour; and (3) 30.7 hours expended by Mr. Gardner at  
 24 \$95.00 per hour. (Mem. P&A ISO Pl.'s Mot. Fees 7:1-19, 17:16-20; see also Brancart Decl. [Doc. 62-2];  
 25 Butler Decl. [Doc. 62-9].) The initial number of hours sought have been voluntarily reduced by 7.5% "to  
 26 account for any duplication of effort or time not reasonably spent." (See Mem. P&A ISO Pl.'s Mot. Fees  
 27 7:1-8:3.) After calculating that reduction, Mr. Brancart's total number of hours sought has been  
 augmented by 13 hours for his work on the instant motion. Similarly, Mr. Butler seeks an additional  
 hour for work on the instant motion. (See, e.g., *id.* at 17:9-14.)

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<sup>5</sup> This figure represents the aggregate total costs that Plaintiff seeks in her motion. It represents  
 costs to Mr. Brancart's firm in the amount of \$2,931.45 and costs to LASSD in the amount of  
 \$2,009.68. (See, e.g., Mem. P&A ISO Pl.'s Mot. Fees 17:18-20.)

1 brief.”<sup>6</sup> (Pl.’s *Reply* 9:6–9.) Mr. Butler also seeks an additional \$176.00 in costs incurred  
 2 while working on Plaintiff’s reply. (See *id.* at 9:22–23 (requesting \$2,185.68 instead of  
 3 the \$2,009.68 in costs sought in the fee motion).) Plaintiff’s motion and reply include  
 4 billing records and declarations in support of the amounts that she seeks.

5 Defendant, for his part, does not dispute that Plaintiff is the prevailing party, or  
 6 that Plaintiff is entitled to reasonable attorney’s fees. (See *Def.’s Opp’n* 1:19–21; *Jt. Appl.*  
 7 & *Stip.* ¶ 3; *Rep. Tr. of Settlement* 3:1–5.) Notably, Defendant also does not dispute the  
 8 reasonableness of the hourly compensation rates proffered by Plaintiff’s counsel, that  
 9 Plaintiff is entitled to costs, or the reasonableness of the costs outlined in Plaintiff’s  
 10 motion. The only contested issue is the reasonableness of the hours billed by Plaintiff’s  
 11 counsel. (*Def.’s Opp’n* 9:2; *Pl.’s Reply* 1:25–27.) Defendant submits the following  
 12 arguments in his attempt to demonstrate the unreasonableness of the requested fees: (1)  
 13 the fees sought are unreasonable in relation to the results Plaintiff’s counsel have  
 14 obtained; (2) documentation of the requested fees is improper; (3) the requested fees are  
 15 excessive due to overstaffing; and (4) the time Mr. Brancart spent on the anti-SLAPP  
 16 motion is not compensable. (See *Def.’s Opp’n*.)

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#### 18       A. Plaintiff’s Objection and Motion to Strike

19       In responding to the instant motion, Defendant submitted a timely opposition.  
 20 (See *Def.’s Opp’n*.) Defendant appended to his opposition a document entitled “Rule 26  
 21 Disclosure and Declaration of Robert K. Sall.” (See *Sall Decl.* [Doc. 66-1] ¶¶ 1–2.) In the  
 22 declaration, Mr. Sall purports to be an expert witness and provides a series of opinions  
 23 in accordance with his engagement as such. (See generally *id.*) Plaintiff, in replying to the  
 24 opposition, has filed a concurrent objection and motion to strike Mr. Sall’s declaration.  
 25 (See *Pl.’s Obj. & Mot. Strike*.) Before reaching the merits of Plaintiff’s underlying fee  
 26 motion, the Court will first address Plaintiff’s motion to strike. For the following

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<sup>6</sup> This figure is based on: (1) 16.3 hours of work by Mr. Brancart at \$450.00 per hour; and (2) 6.2 hours of work by Mr. Butler at \$285.00 per hour. (See, e.g., *Pl.’s Reply* 9:10–18.)

1 reasons, the Court **DENIES** Plaintiff's objection to and concurrent motion to strike Mr.  
 2 Sall's declaration.

3 Under Federal Rule of Civil Procedure 26(a)(2)(A), a party must disclose the  
 4 identity of each expert witness "it may use *at trial* to present evidence." Fed. R. Civ. P.  
 5 26(a)(2)(A) (emphasis added). Such disclosures must be "accompanied by a written  
 6 report —prepared and signed by the witness—if the witness is one retained or specially  
 7 employed to provide expert testimony in the case." Fed. R. Civ. P. 26(a)(2)(B). Rule  
 8 26(a)(2)(D) further provides that parties "must make these disclosures at the time and in  
 9 the sequence that the court orders." Fed. R. Civ. P. 26(a)(2)(D). A party who fails to  
 10 adhere to the court's *pre-trial* scheduling order is subject to sanctions under Rule 16(f)  
 11 and Rule 37(c).

12 Plaintiff argues that the Court should, under Rule 37(c), strike Mr. Sall's  
 13 declaration because it comes after the August 26, 2013 deadline for Rule 26(a)(2)  
 14 disclosures contained in Judge Dembin's scheduling order setting *pre-trial* deadlines. (See  
 15 Pl.'s Obj. & Mot. Strike 4:10–5:3.) However, Plaintiff does not cite, and the Court's  
 16 research has not uncovered, any authority for the proposition that Rule 37(c) applies in  
 17 the context of a post-settlement motion for attorney's fees. Here, Plaintiff's claims have  
 18 been settled pursuant to the terms of the above-described settlement agreement. (See *Jt.*  
 19 *Appl. & Stip.; Rep. Tr. of Settlement.*) In the wake of that agreement, the Court vacated the  
 20 pre-trial conference. (See *June 24, 2014 Order* [Doc. 59].) The sole issue remaining in this  
 21 case is the ambit of Plaintiff's reasonable attorney's fees. It follows that the purpose of  
 22 Rule 26(a)(2)—which was designed to prevent ambush *at trial*—is not implicated here. See  
 23 Ortiz-Lopez v. Sociedad Espanola de Auxilio Mutuo Y Beneficiencia de Puerto Rico, 248  
 24 F.3d 29, 35 (1st Cir. 2001).

25 Without more, the Court cannot find that Defendant violated Rule 26, or that  
 26 Rule 37 sanctions should now be applied to preclude Mr. Sall's declaration.<sup>7</sup> Because  
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28 <sup>7</sup> Although Defendant refers to Sall's declaration as a "Rule 26 Disclosure," the  
 declaration appears to relate to Rule 26 only insofar as its contents match the requirements of

1 Plaintiff has had an opportunity to reply to Defendant's opposition and to Mr. Sall's  
 2 declaration in support thereof, Plaintiff does not appear to have suffered any prejudice.  
 3 (See *Pl.'s Reply*.) Therefore, in light of the above, the Court **DENIES** Plaintiff's objection  
 4 to and motion to strike Mr. Sall's declaration.

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6       **B. Reasonableness of Fees in Relation to Results Obtained**

7       That a plaintiff is deemed a "prevailing party" for the purposes of a fee-shifting  
 8 provision says little about the reasonableness of the fees sought. See Hensley, 461 U.S.  
 9 at 424. In Hensley, the Supreme Court set forth various standards that "are generally  
 10 applicable in all cases in which Congress has authorized an award of fees to a 'prevailing  
 11 party.'" Id. at 433 n.7. One such standard requires courts to "focus on the significance  
 12 of the overall relief obtained by the plaintiff in relation to the hours reasonably expended  
 13 on the litigation." Id. at 435. The Court further emphasized this point in holding that  
 14 "the extent of a plaintiff's success is a crucial factor that the district courts should  
 15 consider carefully in determining the amount of fees to be awarded." Id. at 438 n.14.  
 16 If a plaintiff achieves only partial or limited success, the lodestar figure "may be an  
 17 excessive amount." Id. at 436.

18       Defendant contends that Plaintiff's attorneys achieved only limited success in  
 19 pursuing Plaintiff's claims. In support of this argument, Defendant cites a number of  
 20 cases and points to the fact that "Plaintiff only received \$40,000 in settlement for her  
 21 claims." (See *Def.'s Opp'n* 10:6-9.) Accordingly, Defendant concludes that the fees  
 22 sought are not commensurate with the extent of Plaintiff's success. (See *id.* at 9:1-10:9.)  
 23 Plaintiff, on the other hand, contends that the parties' settlement agreement represents  
 24 the relief she sought in her complaint. (*Pl.'s Reply* 2:8-10.) She claims that her attorneys  
 25 obtained "significant" and "excellent" results, as opposed to merely partial or limited  
 26 success. (See *Mem. P&A ISO Pl.'s Mot. Fees* 8:4-26; *Pl.'s Reply* 2:3-4.) Thus, Plaintiff avers  
 27 that the quantity of time spent on her case, measured against the results obtained, was  
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Rule 26(a)(2)(B)(i)-(vi). (See *Sall Decl.*)

1 reasonable. (*Id.* at 8:24–26.)

2 Defendant’s arguments fail to persuade for three reasons. First, the cases to which  
 3 Defendant cites are not applicable here. For instance, Farrar v. Hobby involved a civil  
 4 rights plaintiff who obtained a nominal damages award of one dollar after litigating his  
 5 case for ten years. 506 U.S. 103 (1992). The Supreme Court ultimately declined to  
 6 award the plaintiff *any* attorney’s fees. *Id.* at 115 (holding that “[w]hen a plaintiff  
 7 recovers only nominal damages because of his failure to prove an essential element of his  
 8 claim for monetary relief, the only reasonable fee is usually no fee at all”) (citations  
 9 omitted). To say that Plaintiff’s \$40,000 pecuniary recovery in this case is merely  
 10 “nominal” would, at best, be a mischaracterization. Furthermore, McCown v. City of  
 11 Fontana is also inapplicable here. 565 F.3d 1097 (9th Cir. 2008). McCown involved a  
 12 plaintiff who, after having most of his claims dismissed on summary judgment, “received  
 13 \$20,000 in damages as part of a settlement agreement for his single remaining claim, *and*  
 14 *no other relief.*” *Id.* at 1104 (emphasis added). Here, all of Plaintiff’s claims were still  
 15 intact at the time of settlement, and Plaintiff obtained injunctive relief in addition to her  
 16 five-figure damages award.

17 Second, Plaintiff has proffered evidence that her non-pecuniary award is of  
 18 considerable import. (See Brancart Decl. ¶ 29; Loy Decl. [Doc. 62-7] ¶ 11.) Defendant, on  
 19 the other hand, does not adequately explain or otherwise provide evidence in support  
 20 of his assertion that the fees requested are not reasonably related to *all* the relief Plaintiff  
 21 obtained in settling her claims. See Gates, 987 F.2d at 1397–98 (“The party opposing  
 22 the fee application has a burden of rebuttal that requires submission of evidence to the  
 23 district court challenging the accuracy and reasonableness of the hours charged or the  
 24 facts asserted by the prevailing party in its submitted affidavits.”). Rather, in failing to  
 25 address Plaintiff’s non-pecuniary relief, Defendant seems to have concluded that such  
 26 relief is worthless. (See, e.g., Def.’s Opp’n 10:6–7 (stating that “Plaintiff only received  
 27 \$40,000 in settlement for her claims”)).

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1        Third, Defendant's contention that "no more than approximately \$40,000 should  
 2 reasonably be awarded in attorney's fees [in this case]" is inapposite. (See Def.'s Opp'n  
 3 6:20-22.) This strict proportionality argument is inconsistent with the relevant case law.  
 4 See, e.g., McCown, 565 F.3d at 1104 (explaining that a "strict test of proportionality" is  
 5 inappropriate "because it fails to recognize the nature of many, if not most, civil rights  
 6 cases, in which damages may be limited by law, regardless of the importance of the civil  
 7 rights at issue") (citing City of Riverside v. Rivera, 477 U.S. 561, 576-78 (1986)). The  
 8 Court recognizes the disparity between the \$40,000 amount and the amount that  
 9 Plaintiff seeks in attorney's fees. However, that factor is "only one of many factors that  
 10 [the] [C]ourt should consider in calculating an award of attorney's fees." Rivera, 477  
 11 U.S. at 574. And, in the absence of evidence from Defendant to rebut Plaintiff's  
 12 evidence regarding the magnitude of the injunctive relief obtained, the Court will not  
 13 speculate as to the precise dollar value of that relief. Thus, without more, the Court  
 14 cannot say that the total amount of fees requested is intrinsically unreasonable in relation  
 15 to the results Plaintiff obtained. See Hensley, 461 U.S. at 436.

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17        **C. Propriety of the Documentation of Counsel's Hours**

18        According to Defendant, the hours requested have not been adequately  
 19 documented. Defendant contends that Plaintiff's counsel: (1) "generally summarized all  
 20 of the hours and activities they undertook" and supplied non-contemporaneous records  
 21 that were "created after the fact" (Def.'s Opp'n 2:13-15, 4:10-11); and (2) "repeatedly  
 22 use[d] a disfavored billing method known as block billing." (*Id.* at 5:16-17.) The Court  
 23 addresses each of these issues below.<sup>8</sup>

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25        <sup>8</sup> In addition to these contentions, Defendant also argues that many of Plaintiff's attorneys' time  
 26 records "contain indecipherable words or letters that are vague and do not accurately reflect a clear and  
 27 concise method of time keeping or reporting." (Def.'s Opp'n 3:20-22.) Mr. Brancart has since submitted  
 28 a revised time record that clarifies the meaning of those abbreviations. (See *Brancart Decl. sans Abbrev.*  
 [Doc. 70-2].) Thus, to the extent that this previously constituted an obstacle, the Court is satisfied that  
 it has been remedied.

1. *Time summaries and contemporaneity of records*

In support of his contention that Plaintiff's counsel improperly summarized hours and failed to provide contemporaneous time-keeping records, Defendant cites Entertainment Research Group, Inc. v. Genesis Creative Group, Inc., 122 F.3d 1211, 1230-31 (9th Cir. 1997). According to Defendant, that case stands for the proposition that "a district court may abuse its discretion by relying on summaries[] of billing records in declarations that are not sufficient to distinguish time spent on different claims." (Def.'s Opp'n 12:2-7.) Plaintiff, however, maintains that counsel *did* keep regular time sheets, and that counsel's submissions reflect contemporaneous records that were not "reconstructed" after the fact. (Pl.'s Reply 4:19-25.) Moreover, Plaintiff contends that Genesis does not apply in this instance because Plaintiff did not fail to prevail on her claims. (*Id.* at 3:25-4:4.) The Court agrees with Plaintiff.

In Genesis, a manufacturer filed a lawsuit, consisting of twelve causes of action, against multiple defendants. 122 F.3d at 1214-16. After prevailing on two different partial summary judgment motions, the defendants, under a federal fee-shifting statute, filed separate motions to recover attorney's fees on some of the plaintiff's claims. *Id.* at 1216. In reviewing the district court's award of fees to one of the prevailing defendants, the Ninth Circuit explained that "[g]iven the instant circumstances . . . the district court abused its discretion by concluding that the summaries submitted in conjunction with the declaration of [the defendant's] counsel were sufficient to determine exactly how many hours [the defendant] spent solely defending against [the compensable claims]." *Id.* at 1231. The court then noted that "in these circumstances, we believe that the district court erred in not requiring [the defendant] to submit its original time records and billing statements so that [the plaintiff]—and the district court—could determine whether the fees being claimed were truly for time spent in defending against the [compensable] claims." *Id.*

The circumstances that existed in Genesis are not present in the instant case. Here, it cannot be said that Plaintiff was successful on some of her claims and

1 unsuccessful on others. The Court's review of the record indicates that the parties  
 2 reached a settlement as to *all* of Plaintiff's claims, none of which had previously been  
 3 waived or otherwise disposed of through any consequential motion practice. (CMC  
 4 Minute Entry 4:1-25.) As a result, this case does not require the type of fee segregation  
 5 that the Ninth Circuit required in Genesis. See Genesis, 122 F.3d at 1230-31 (citing  
 6 Hensley, 461 U.S. at 434-37).<sup>9</sup> The Court accepts counsel's records as being sufficiently  
 7 detailed and reflective of the work completed. See United Steelworkers of Am. v. Ret.  
 8 Income Plan for Hourly-Rated Employees of ASARCO, Inc., 512 F.3d 555, 565 (9th Cir.  
 9 2008). The Court need not parse the time counsel allocated toward certain claims versus  
 10 others. Therefore, this does not appear to be a basis for a reduction of the hours sought.  
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12       2. *Block Billing*

13       Defendant also contends that the number of hours for which Plaintiff seeks  
 14 attorney's fees is unreasonable because Mr. Brancart employed a method of billing  
 15 known as "block billing."<sup>10</sup> (Def.'s Opp'n 12:8-10.) In support of this argument,  
 16 Defendant points to a number of examples in Mr. Brancart's time records, and cites  
 17 Welch v. Metropolitan Life Insurance Co., 480 F.3d 942, 948 (9th Cir. 2007) for its  
 18 discussion of the improprieties of block billing. (Def.'s Opp'n 12:11-25; see Sall Decl. ¶  
 19 9.8.) According to Plaintiff, the entries in Mr. Brancart's records that Defendant has  
 20 identified as improper "are not the kind of 'block billing' justifying across the board  
 21 reductions in time." (Pl.'s Reply 7:28-8:1.)

22       "Block billing" is 'the time-keeping method by which each lawyer and legal  
 23 assistant enters the total daily time spent working on a case, rather than itemizing the

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 25       <sup>9</sup> The Court notes that even if this were such a case, Defendant has not made an adequate  
 26 showing of a distinction between the claims that would require segregation and the claims for which  
 27 Plaintiff can properly seek attorney's fees.

28       <sup>10</sup> Defendant advances his block billing argument only with respect to Mr. Brancart. (See Def.'s  
 29 Opp'n 12:8-25.) Therefore, the Court does not address Mr. Butler's or Mr. Gardner's time records in  
 the context of this issue.

1 time expended on specific tasks.”” Welch v. Metro. Life Ins. Co., 480 F.3d 942, 945 n.2  
 2 (9th Cir. 2007) (quoting Harolds Stores, Inc. v. Dillard Dep’t Stores, Inc., 82 F.3d 1533,  
 3 1554 n.15 (10th Cir. 1996)). Block billing is generally disfavored because it complicates  
 4 a court’s assessment of the reasonableness of individual tasks performed by attorneys.  
 5 See id. at 948. However, a block-billed entry is only problematic where it ““obscure[s] the  
 6 nature of some of the work claimed.”” Kittok v. Leslie’s Poolmart, Inc., 687 F. Supp. 2d  
 7 953, 964 (C.D. Cal. 2009) (alteration in original) (quoting Christian Research Inst. v.  
 8 Alnor, 165 Cal. App. 4th 1315, 1325 (2008)).

9 According to Plaintiff, “block billing that ‘involves the grouping of highly related  
 10 tasks that rarely cover more than a few hours[]’ does not call for a reduction in fees.”  
 11 (Pl.’s Reply 8:7-9 (quoting Sunstone Behavioral Health, Inc. v. Alameda Cnty. Med. Ctr.,  
 12 646 F. Supp. 2d 1206, 1217 (E.D. Cal. 2009).) However, using that metric in reviewing  
 13 Mr. Brancart’s time records, the Court estimates that approximately 20% of the hours  
 14 reported in those records—due to the grouping of various tasks—have complicated the  
 15 Court’s ability assess the reasonableness of the hours expended against the tasks  
 16 completed. Sunstone, 646 F. Supp. 2d at 1214. Therefore, in addition to Plaintiff’s  
 17 suggested voluntary reduction to Mr. Brancart’s hours, the Court, in its discretion, will  
 18 reduce Mr. Brancart’s hours by an additional 2% (20% of total hours multiplied by a  
 19 10% reduction = 2% overall reduction). See Darling Int’l, Inc. v. Baywood Partners, Inc.,  
 20 2007 WL 4532233, at \*9 (N.D. Cal. Dec. 19, 2007) (noting that, where employed, courts  
 21 typically make an adjustment of 5% to over 30% in cases involving block billing).

22

23 **D. Overstaffing**

24 Defendant’s next contention is that the total number of hours for which Plaintiff’s  
 25 attorneys seek compensation should be reduced to account for overstaffing and  
 26 duplicative work. (Def.’s Opp’n 13:1-14:26; Sall Decl. ¶¶ 9.6, 9.10.) According to  
 27 Defendant, Plaintiff’s evidence suggests that her attorneys engaged in excessive  
 28 consultations and unnecessarily exerted duplicative efforts in attending the same hearings

1 or working on the same projects. (Def.'s Opp'n 13:14-17.) These contentions, however,  
 2 fail to persuade.

3 The Ninth Circuit has instructed courts "to examine with skepticism claims that  
 4 several lawyers were needed to perform a task." Democratic Party of Wash. State v. Reed,  
 5 388 F.3d 1281, 1286 (9th Cir. 2004). Indeed, when considering the lodestar calculation,  
 6 courts must exclude hours that are unnecessary or redundant. Tahara v. Matson  
 7 Terminals, Inc., 511 F.3d 950, 955 (9th Cir. 2007) (quoting Hensley, 461 U.S. at 434).  
 8 However, "[p]articipation of more than one attorney does not necessarily amount to  
 9 unnecessary duplication of effort." Reed, 388 F.3d at 1286. Courts are required to  
 10 exercise judgment and discretion when examining the circumstances of a particular case  
 11 and in deciding whether there has been unnecessary staffing or duplication of work. Id.  
 12 at 1286-87. At the same time, "[i]t must also be kept in mind that lawyers are not likely  
 13 to spend unnecessary time on contingency fee cases in the hope of inflating their fees,"  
 14 given the uncertainty of the ultimate payoff "as to both the result and the amount of the  
 15 fee." Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008).

16 In arguing that Plaintiff's counsel engaged in excessive consultations, Defendant's  
 17 contentions appear to be inconsistent. According to the declaration submitted in  
 18 support of Defendant's opposition, the fact that a consultation between Plaintiff's  
 19 attorneys appears on the time records of only one of those attorneys indicates that the  
 20 time records are inaccurate or "potentially even false." (Sall Decl. ¶ 9.6.) In his  
 21 opposition, however, Defendant cites Settlegoode v. Portland Public Schools, 2005 WL  
 22 1899376, at \*7 (D. Or. Aug. 9, 2005), for the proposition that "[w]hen attorneys hold a  
 23 telephone or personal conference, good 'billing judgment' mandates that only one  
 24 attorney should bill that conference to the client, not both attorneys." Yet, it seems that  
 25 Plaintiff's attorneys indeed exercised such billing judgment in deciding not to bill twice  
 26 for the same consultations. (See, e.g., Pl.'s Reply 6:5-11.) Thus, in light of such billing  
 27 judgment, and given the apparent contradiction in Defendant's averments, Defendant's  
 28 contentions fail.

1        In addition, Plaintiff has provided evidence as to Mr. Brancart's experience and  
 2 the reasonableness of LASSD's decision to engage Mr. Brancart as co-counsel in  
 3 Plaintiff's case. (See *Butler Decl.* ¶¶ 4-5; *see also Brancart Decl.*) And, as other courts have  
 4 determined, it is not unreasonable for an attorney to engage non-local co-counsel with  
 5 expertise in a particular area of law relevant to a particular case, or for such non-local  
 6 counsel to seek reasonable fees for travel time. See, e.g., *Thalheimer v. City of San*  
 7 *Diego*, 2012 WL 1463635, at \*4 (S.D. Cal. Apr. 26, 2012) (citing cases). The Court is  
 8 satisfied with Plaintiff's evidence as to the reasonableness of the hours for Mr. Brancart's  
 9 travel time and involvement in various hearings in this case. In challenging those hours,  
 10 however, Defendant has failed to meet his burden of rebuttal. (See *Def.'s Opp'n*  
 11 13:19-14:18 (failing to cite authority or relevant evidence).) Moreover, to the extent that  
 12 Plaintiff's attorney's hours can be described as duplicative, they are not egregiously so,  
 13 and, as discussed below, the Court will apply an across-the-board reduction to address  
 14 that issue. See *Moreno*, 534 F.3d at 1112 (noting that "the district court can impose a  
 15 small reduction, no greater than 10 percent—a 'haircut'—based on its exercise of  
 16 discretion and without a more specific explanation").

17

18        **E. Time Spent on the Anti-SLAPP Motion**

19        Defendant challenges the time for which Mr. Brancart worked on the "SLAPP  
 20 matter." (See *Def.'s Opp'n* 15:1-13.) Defendant points to Mr. Brancart's time entries  
 21 dated 1/28/2013, 1/30/2013, 2/6/2013, and 2/8/2013 as examples of time spent on  
 22 that matter. (*Id.* at 15:10-11; *see also Sall Decl.* ¶ 9.9.) According to Defendant, time for  
 23 such work is not compensable because it constitutes a duplication of time for work that  
 24 has already been compensated. (*Def.'s Opp'n* at 15:7-8.) Alternatively, Defendant  
 25 suggests that such time should not be compensated because fees regarding the anti-  
 26 SLAPP proceedings have already been separately adjudicated. (*Id.* at 15:11-12.)

27        Plaintiff counters that the anti-SLAPP fee-shifting statute does not preclude her  
 28 from recovering Mr. Brancart's anti-SLAPP fees under the fair housing fee-shifting

1 statutes. (Pl.’s *Reply* 8:23–26 (citing Cal. Civ. Proc. Code § 425.16(c).)) In support of this  
 2 contention, Plaintiff cites Cabrales v. County of Los Angeles, 935 F.2d 1050, 1052 (9th  
 3 Cir. 1991), wherein the Ninth Circuit held that “plaintiffs are to be compensated for  
 4 attorney’s fees incurred for services that contribute to the ultimate victory in the lawsuit.”  
 5 (*Pl.’s Reply* 8:26–9:1.) Although both parties’ arguments are largely unconvincing, the  
 6 Court—for the reasons stated below—declines to award Plaintiff attorney’s fees for any  
 7 time spent by Mr. Brancart on the anti-SLAPP matter.

8 As an initial matter, the Court finds Plaintiff’s citation to Cabrales to be  
 9 unavailing. Plaintiff states, without elaboration, that Mr. Brancart’s work on the anti-  
 10 SLAPP motion “contributed to plaintiff’s ultimate victory in this case.” (*Pl.’s Reply*  
 11 9:1–2.) However, without more, this conclusory assertion fails to elucidate how Mr.  
 12 Brancart’s work on the anti-SLAPP motion—which was filed in response to Defendant’s  
 13 defamation counterclaim—contributed to Plaintiff’s “ultimate victory” on her own claims  
 14 within the purview of that phrase’s meaning in Cabrales.

15 Additionally, it is worth noting that in arguing against an award of fees for work  
 16 on the anti-SLAPP motion, Defendant again mischaracterizes Plaintiff’s motion. In his  
 17 opposition, Defendant seems to argue that Plaintiff’s motion excludes *all* time allocated  
 18 to the anti-SLAPP matter. (*Def.’s Opp’n* 10:5–6.) It does not. What Plaintiff’s motion  
 19 *does* exclude, however, is the time LASSD spent on the anti-SLAPP motion. (*Mem. P&A*  
 20 ISO Pl.’s Mot. Fees 6:16–17 (“Using this formula, excluding time spent on the anti-SLAPP  
 21 motion by LASSD . . . .”)(emphasis added).) In other words, the instant motion does not  
 22 purport to exclude time that Mr. Brancart spent on the anti-SLAPP motion.

23 Still, another source *does* purport to exclude such time. In a May 2013 declaration  
 24 submitted by Mr. Brancart in support of Plaintiff’s first motion for attorney’s fees, Mr.  
 25 Brancart declared that his firm “does not see[k] to recover the several hours of time spent  
 26 by me in consultation with Mr. Butler on the SLAPP motion or on reviewing and  
 27 revising that motion.” (*Brancart Decl. ISO Mot. Anti-SLAPP Fees* [Doc. 31-4] ¶ 4.) That  
 28 statement is clear and is unaccompanied by any temporal qualification, such as “at

1 present" or "at this time." (*Id.*)

2 In light of the above, the Court will reduce the fee award by the number of hours  
 3 Mr. Brancart spent on the anti-SLAPP matter, which Defendant has indicated as  
 4 amounting to at least 4.6 hours. (See Def.'s Opp'n 15:10-11 (providing examples).) Based  
 5 on the Court's review of Mr. Brancart's time records, Mr. Brancart spent an  
 6 additional 1.7 hours on the anti-SLAPP matter beyond the 4.6 hours to which Defendant  
 7 has pointed.<sup>11</sup> Thus, it appears that Mr. Brancart spent a total of 6.3 hours on the anti-  
 8 SLAPP matter, and the Court reduces Plaintiff's fee award accordingly.

9

10 **F. Plaintiff's Request for Fees on Fees**

11 Plaintiff also seeks additional fees and costs for time that her attorneys have  
 12 allocated toward preparing the reply brief and concurrent motion to strike Mr. Sall's  
 13 declaration. (See Pl.'s Reply 9:6-23.) Specifically, Mr. Butler seeks an additional 6.2  
 14 hours, for a total of \$1,767.00, and Mr. Brancart seeks an additional 16.3 hours, for a  
 15 total of \$7,335.00. (See *id.*) According to the Court's review of the relevant case law,  
 16 such time is compensable. See *In re Nucorp Energy, Inc.*, 764 F.2d 655 (9th Cir. 1985)  
 17 (citing cases and noting that the Ninth Circuit and other circuit courts have "concluded  
 18 that statutory fee award provisions should be read as authorizing compensation for time  
 19 spent litigating fee awards"); see also *Clark v. City of Los Angeles*, 803 F.2d 987, 992 (9th  
 20 Cir. 1986) (citations omitted). Still, the Court must determine the reasonableness of the  
 21 fees sought. *Hensley*, 461 U.S. at 424; see also 42 U.S.C. § 3613(c)(2).

22 In viewing the declarations submitted by Mr. Butler and Mr. Brancart in support  
 23 of Plaintiff's reply, the Court concludes that the hours sought are reasonably related to  
 24 the tasks completed. (See *Brancart Reply Decl.* [Doc. 70-1] ¶ 9; See *Butler Reply Decl.* [Doc.  
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26 <sup>11</sup> This additional 1.7 hours includes time Mr. Brancart spent on the anti-SLAPP matter on  
 27 3/22/2013, 8/2/2013, and 11/1/2013. (See *Brancart Time Records* [Doc. 62-4] 5-9.) Because the entry  
 28 for 11/1/2013 includes various tasks, the Court is unable to segregate the anti-SLAPP time from the  
 rest of the entry. (*Id.* at 9.) Thus, the Court will exclude the entire 0.9 hours sought for work on that  
 date.

1 70-3] .) While there does appear to be some duplication of efforts in the time counsel  
 2 spent reviewing various documents, such duplication appears to be minor. Thus, as  
 3 discussed below, the Court will apply the same across-the-board reduction to the fees  
 4 sought by Mr. Butler and Mr. Brancart for their work on Plaintiff's reply brief. However,  
 5 because Plaintiff did not prevail on her motion to strike Mr. Sall's declaration, the Court  
 6 will reduce Mr. Butler's time by 4 hours—the number of hours related to his work on that  
 7 motion. See Hensely, 461 U.S. at 436.

8

9 **G. Award Fee Summary**

10 In Plaintiff's motion for fees, Plaintiff's calculation of the lodestar figure included  
 11 a proposed 7.5% reduction "for any duplication of effort or unreasonable time." In the  
 12 documents supporting Plaintiff's reply brief, however, Plaintiff appears to now suggest  
 13 a 10% reduction in those hours. (See *Brancart Reply Decl.* ¶ 8.) The Court accepts this  
 14 figure as appropriate for addressing any excess that exists in the lodestar amounts for the  
 15 hours that Plaintiff seeks. *Moreno*, 534 F.3d at 1112. Accordingly, the Court will apply  
 16 a 10% reduction to the pre-fee motion hours sought by Mr. Brancart, Mr. Butler, and  
 17 Mr. Gardner. And, as discussed above, the Court will reduce Mr. Brancart's pre-fee  
 18 motion hours by an additional 2% to account for the limited block-billed entries in his  
 19 time records. The Court will also reduce Mr. Brancart's pre-fee motion time by 6.3  
 20 hours—the amount of time Mr. Brancart allocated to work on the anti-SLAPP matter.  
 21 Moreover, with respect to the hours sought for work on Plaintiff's reply brief, the Court  
 22 will reduce Mr. Butler's time by the 4 hours spent on Plaintiff's motion to strike, and will  
 23 apply an across-the-board reduction of 10% to both Mr. Brancart's and Mr. Butler's  
 24 hours. Thus, the Court finds Plaintiff entitled to an attorney fee award as follows:

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1 Brancart & Brancart (Mr. Brancart)

	Total Hours	Reduction	Adjusted	Rate	Total
Pre-Fee Motion Work	147.7	- 6.3 anti-SLAPP hours and 12% reduction	124.4	\$450/hour	\$55,980.00
Fee Motion	13.0	--	--	\$450/hour	\$5,850.00
Reply Brief	16.3	10% reduction	14.7	\$450/hour	\$6,615.00
Paralegal (Gardner)	33.2	10% reduction	29.9	\$95/hour	\$2,840.50
					\$71,285.50

12 LASSD (Mr. Butler)

	Total Hours	Reduction	Adjusted	Rate	Total
Pre-Fee Motion Work	118.0	10% reduction	106.2	\$285/hour	\$30,267.00
Fee Motion	1.0	--	--	\$285/hour	\$285.00
Reply Brief	6.2	- 4.0 strike motion hours and 10% reduction	2.0	\$285/hour	\$570.00
					\$31,122.00

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1     IV. CONCLUSION AND AWARD

2       For the foregoing reasons, the Court **DENIES** Plaintiff's motion to strike [Doc.  
3 69] and **GRANTS-IN-PART** Plaintiff's motion for attorney's fees [Doc. 62]. The Court  
4 awards Plaintiff \$107,524.63 in fees and costs.<sup>12</sup>

5       **IT IS SO ORDERED.**

6  
7       DATED: November 13, 2014

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11      Hon. Thomas J. Whelan  
12      United States District Judge

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28       <sup>12</sup> This figure includes the \$2,931.45 in costs incurred by Brancart & Brancart, and the  
\$2,185.68 in costs incurred by LASSD. (See Pl.'s Reply 9:18-23.)